



To: Policy Directors, Candidates for President of the United States  
From: Protect Democracy  
Date: June 2019  
RE: **Executive Actions to Protect Against Government Disinformation by  
Implementing the Information Quality Act<sup>1</sup>**

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In our democracy, the public requires accurate and honest information from our government. Our democracy is premised on the notion that authority to govern derives from the public, and that the surest course for developing sound national policy lies in robust and informed public debate. When the government disseminates inaccurate or misleading information, it undermines the public's ability to make informed decisions, hold public officials accountable, and chart our own destiny.

President Trump and his administration routinely flout these bedrock principles and deliberately disseminate false and misleading information to the American public. In January 2018, for example, the Department of Homeland Security (DHS) and the Department of Justice (DOJ), at the President's direction, issued a [misleading](#), [biased](#), [methodologically unsound](#), and [inaccurate](#) report supporting the President's second "travel ban" which suggested that immigrants are far more likely to commit terrorism-related offenses than natural born citizens.<sup>2</sup>

In July 2018, the President's Council of Economic Advisors issued a report supporting the expansion of work requirements in welfare programs which [falsely claimed](#) that only three percent of the U.S. population is impoverished. And in May 2017, the White House itself released a letter and a statement from the press secretary which both [falsely claimed](#) that the President had decided to terminate then-FBI Director Comey based on recommendations from the DOJ.

In 2000, Congress enacted the Information Quality Act (IQA) on a bipartisan basis to ensure the "quality, objectivity, utility, and integrity" of information disseminated to the public by federal agencies. 44 U.S.C. § 3516 note. In order to strengthen government decision making and increase transparency, the IQA requires the Office of Management and Budget (OMB) to issue guidance to various federal agencies requiring them to ensure that they adhere to best practices and provide the public a right to challenge government-released information that is biased or inaccurate.

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<sup>1</sup> Treasury and General Government Appropriations Act, 2001, Pub. L. No. 106-554, § 515(a) (2000) (as codified at 44 U.S.C. § 3516, note).

<sup>2</sup> Worse still, DHS and DOJ have since admitted the report is misleading yet [refuse to correct it](#).

The IQA could play an important role in preventing the White House and agencies from disseminating inaccurate or misleading information to the public. But the IQA does not apply to the White House or every agency. And even where it does apply, the Executive Branch has argued, and some courts have accepted, that agencies have no judicially enforceable obligation to correct inaccurate or misleading information.

Protect Democracy has [called on](#) Congress to amend the IQA to address these shortcomings. But even without Congress, the next president can hold her or his administration to a high standard of truthfulness. The president can ensure that the White House and all federal agencies can again be a source of trusted information for the public — and not a fount of disinformation. Upon taking office, the next president should take executive actions to implement the IQA to ensure truthfulness and accuracy.<sup>3</sup>

**Subject the Executive Office of the President to the IQA.** The next president should apply the IQA to the Executive Office of the President (EOP). He or she should direct OMB to promulgate a final rule requiring each component of the EOP to ensure the quality, objectivity, utility, and integrity of any information they disseminate. At a minimum, the rule should require that EOP components (1) disclose, where possible, data underlying any information they maintain or disseminate; (2) label opinions as opinions; and (3) provide a mechanism by which individuals affected may seek and obtain the correction of any misinformation.

**Require All Agencies to Promulgate Final Rules or Guidance Implementing the IQA.** The next president should increase the IQA's reach, requiring every federal agency to either promulgate a final rule or issue guidance implementing the IQA. Currently the IQA does not cover the Government Accountability Office or the Federal Election Commission.<sup>4</sup> Taking executive action to expand the IQA's reach will ensure that information maintained or disseminated by these agencies are subject to the quality, objectivity, integrity, and utility requirements of the IQA.

**Prohibit Agencies and the EOP from Maintaining or Disseminating Misleading Information.** The next president should prevent agencies and the EOP from maintaining or disseminating misleading information. Even truthful information can be misleading, if not placed in proper context. For precisely this reason, Congress has long prohibited corporations from deceiving the public by omitting material information from commercial advertisements and financial disclosures. The government should be held to the same standard.

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<sup>3</sup> Protect Democracy has [set out ten authoritarian red lines](#) that candidates should not cross, including circumventing acts of Congress. The proposed executive actions proposed here would implement, not transgress the IQA. And rather than grabbing power for the executive branch from Congress, these actions would place constraints on the executive branch.

<sup>4</sup> The IQA also does not cover government-owned, contractor-operated facilities.

The next president should require agencies and OMB to promulgate final rules prohibiting agencies and the EOP from maintaining or disseminating information with material omissions. The executive order should specify that the regulations require that agencies and the EOP not omit any information material to a policy decision or determination of fact. It should further specify that whenever agencies or the EOP disclose previously confidential, classified, or otherwise secret information, they must take care to disclose enough information to place the disclosure in context.<sup>5</sup>

**Render Agency and EOP Components' Refusals to Correct Misinformation Subject to Judicial Review.** To give the IQA teeth, the next president should ensure that agencies' refusals to correct poor quality information be subject to judicial review. Some courts have refused to review IQA claims on the grounds that neither the IQA nor OMB's current guidance provides courts with judicially manageable standards by which to assess claims of misinformation. To correct this problem, the next president should specify that each agency must issue guidance or adopt a final rule that:

- (1) establishes a mechanism for individuals affected by information of inadequate quality maintained or disseminated by the agency to seek a correction from the agency;
- (2) promulgates judicially manageable standards for determining whether information maintained or disseminated by the agency is of inadequate quality<sup>6</sup> and requires the agency to apply those standards in response to requests for correction;
- (3) requires the agency to either correct any information of inadequate quality or issue a written response denying a request for correction no later than 120 days after receiving the request;
- (4) requires the agency to issue a written response to an appeal of the agency's determination not to correct information within 120 days of receiving an appeal; and
- (5) specifies that a failure to respond to a request for correction or an appeal of an initial determination on a request for correction within 120 days of receiving the request or the appeal shall be deemed final agency action denying the request or affirming the initial decision.

By requiring agencies to adopt policies providing for the mandatory correction of information adjudged to be of inadequate quality under judicially manageable standards, the executive order

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<sup>5</sup> The next president could choose to prohibit the dissemination of misleading information without issuing an executive order. Instead, the next president could direct OMB to revise its guidance construing the IQA to specify that "objective" information is information that does not contain material omissions.

<sup>6</sup> These standards should be akin to the Securities and Exchange Commission's Rule 10-b for manipulative and deceptive financial practices and the Federal Trade Commission's precedent adjudicating claims under Section 5(a) of the Federal Trade Commission Act for false or misleading advertisements.

will ensure that any failure to correct such information will be subject to judicial review under the Administrative Procedure Act.

**Prevent Abuse of the IQA.** The next president should take steps to guard against commercial abuse of the IQA. The primary goal of the IQA, like the Freedom of Information Act (FOIA), is to facilitate informed public debate on issues of public importance. Yet history demonstrates that, left unchecked, corporate and commercial interests disproportionately utilize information entitlements not to foster public debate, but to further private financial and commercial interests.<sup>7,8</sup>

To ensure that corporate and commercial actors do not prevent the IQA from serving its core purpose or abuse the IQA for financial gain, the next president should take executive action requiring that each agency's final rule or guidance implementing the IQA:

- (1) prioritize requests for corrections submitted by members of the news media, educational or scientific organizations, and nonprofit organizations that have no commercial interest in correction;<sup>9</sup>
- (2) permit the agency to reject a request for correction on the grounds that the request is submitted by, at the direction of, or in coordination with a for-profit corporation or its agent(s) and either (a) is submitted for the purpose of hindering legitimate agency action; or (b) concerns a matter of *de minimis* public interest; and

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### **The next president must restore public access to accurate government**

**information.** Access to accurate and honest information from the government is critical to the proper functioning of our democracy. Without it, the public cannot engage in informed debate or reach informed decisions about important public policies.

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<sup>7</sup> Today, for example, the vast majority of FOIA requests are submitted by corporate and commercial actors. Less than ten percent of all FOIA requests are submitted by journalists, news organizations, researchers, and nonprofit organizations.

<sup>8</sup> For commentary on commercial capture of the IQA and FOIA, see Alexander Nathan Hecht, *Administrative Process in an Information Age: The Transformation of Agency Action Under the Data Quality Act*, 31 *J. Legis.* 233 (2005); David E. Pozen, *Transparency's Ideological Drift*, 128 *Yale L.J.* 100 (2018); David E. Pozen, *Freedom of Information Beyond the Freedom of Information Act*, 165 *U. Pa. L. Rev.* 1097, 1112-17 (2017).

<sup>9</sup> The Freedom of Information Act similarly confers priority status on requests made by journalists and educational and scientific institutions, and nonprofit public interest organizations. Specifically, it provides for expedited processing of requests made by a person primarily engaged in disseminating information where there is an urgency to inform the public concerning actual or alleged Federal Government activity. 5 U.S.C. § 552(a)(6)(E)(i), (v). It provides for reduced fees for requests made by educational or noncommercial scientific institutions, whose purpose is scholarly or scientific research, as well as for requests made by representatives of the news media. *Id.* § 552(a)(4)(a)(ii)(II). And it waives fees entirely where the disclosure of information is in the public interest. *Id.* § 552(a)(4)(a)(iii).

The current administration, however, has routinely engaged in politically motivated misinformation campaigns. In an effort to reverse engineer support for the President's uninformed policy decisions — and often at the direction of political appointees, the White House and federal agencies have routinely distributed false and misleading information to the American people.

The next president must reverse course and restore the public's access to reliable government information. The IQA is a powerful tool that stands ready to do the job. By taking the executive actions outlined above to expand and strengthen the IQA, the next president can go far to restoring the public's trust in government information and the proper functioning of our democracy.